

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MARK DOLBIN,
Movant

v.

UNITED STATES OF AMERICA,
Respondent

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Civil Action No. 1:03-cr-00118
(Chief Judge Kane)

MEMORANDUM ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On May 29, 2008, Movant Mark Dolbin filed an application to proceed *in forma pauperis* (Doc. No. 242), and the Court sent him a notice of election. (Doc. No. 244.) Upon receipt of the notice of election, petitioner elected to withdraw the application and to file one all-inclusive 28 U.S.C. § 2255 motion with the Court. (Doc. No. 244.) On December 9, 2008, Dolbin filed a motion to vacate. (Doc. No. 250.) After extended briefing, the Court denied his § 2255 motion on May 11, 2010. (Doc. No. 297.) Dolbin now moves the Court for a copy of his resentencing transcript, “needed for his post conviction relief for an appeal from his § 2255 petition.” (Doc. No. 298.)

Although Dolbin is correct that transcripts may be granted to indigent defendants proceeding *in forma pauperis* by virtue of 28 U.S.C. § 753(f), a motion for transcript will only be granted “if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.” 28 U.S.C. § 753(f). In this case, any appeal Dolbin makes that relates to his resentencing would be deemed frivolous because his § 2255 motion raised no issue related to impropriety or ineffective assistance at his resentencing proceedings and a litigant cannot raise an issue for the first time at

the appellate level. See DIRECTV Inc. v. Seijas, 508 F.3d 123, 125 n.1 (3d Cir. 2007) (“It is well established that arguments not raised before the District Court are waived on appeal.”).

ACCORDINGLY, this 2nd day of July 2010, upon consideration of the foregoing, **IT IS HEREBY ORDERED** Dolbin’s motion for resentencing transcript (Doc. No. 298) is **DENIED**.

____s/ Yvette Kane_____
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania